



North Dakota State Water Commission

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**Meeting To Be Held At
State Office Building
Lower Level Conference Room
Bismarck, North Dakota**

March 23, 2009 - 1:30 P.M., CDT

AGENDA

- A. Roll Call
- B. Consideration of Agenda
- C. Consideration of Draft Minutes of Following SWC Meetings:
- 1) **December 5, 2008 State Water Commission Meeting** **
 - 2) **December 17, 2008 SWC Conference Call Meeting** **
- D. State Water Commission Financial Updates:
- 1) Agency Program Expenditures
 - 2) 2007-2009 Biennium Resources Trust Fund and Water Development Trust Fund Revenues
 - 3) Federal Funding Update
 - 4) Revenues Discussion and Recommendation
 - 5) 2009-2011 Project Funding Plan and Discussion
- E. North Dakota Department of Health:
- 1) **American Recovery and Reinvestment Act of 2009 - Intended Use Plan** **
 - 2) **North Dakota Drinking Water Revolving Loan Fund - 2009 Intended Use Plan Amendment** **
- F. Consideration of Following Requests for State Cost Participation:
- 1) Cost Share Policy Committee Report
- State Cost Participation Requests - Recommended for Approval:**
- 2) **Sweetbriar Creek Dam - Morton County** **
 - 3) **Harmon Lake Recreational Facility - Morton County** **
 - 4) **North Dakota Natural Resources Trust** **
 - 5) **Fort Berthold Reservation Irrigation Feasibility Study** **
 - 6) **Wild Rice Snagging and Clearing - Richland County** **
 - 7) **Red River Valley Water Supply Project** **
- State Cost Participation Requests - Recommended to be Deferred:**
- 8) **Cass County Drain No. 12 Reconstruction Project** **
 - 9) **Cass County Drain No. 13 Reconstruction Project** **
 - 10) **Cass County Drain No. 14 Reconstruction Project** **

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State Cost Participation Requests - Recommended to be Deferred:

(Continued)

- 11) Cass County Drain No. 37 Reconstruction Project** **
- 12) Traill County Drain No. 13 Channel Extension Project** **
- 13) Walsh County Drain No. 73 and 73-1 Reconstruction** **
- 14) Mott Dam Emergency Action Plan** **

F. Consideration of Following Requests for State Cost Participation (Continued):

State Cost Participation Request - Recommended to be Denied:

- 15) Traill County Drain No. 19 Improvement Project** **

G. Northwest Area Water Supply (NAWS) Project:

- 1) Project Report
- 2) City of Kenmare - Water Service Contract and Amendment** **
- 3) Upper Souris Water District - Water Service Contract and Amendment** **
- 4) Contract 5-2C, Kenmare Storage Tank** **

H. Southwest Pipeline Project:

- 1) Project Report
- 2) Contract S-78EF, Seeding Contract for Trotters and Fairfield Service Areas** **

I. Drought Disaster Livestock Water Supply Assistance Program **

J. Garrison Diversion Conservancy District:

- 1) Red River Valley Water Supply Project Update
- 2) Long-Range Water Supply Plan for Burke, Divide, McKenzie, and Williams Counties** **

K. Devils Lake Hydrologic Report

L. 2009 Spring Flood Outlook

M. Missouri River Report

N. Other Business:

- 1) Resolution of Appreciation - Roger Johnson** **

O. Adjournment

**** BOLD, ITALICIZED ITEMS REQUIRE SWC ACTION**

MINUTES

North Dakota State Water Commission Bismarck, North Dakota

March 23, 2009

The North Dakota State Water Commission held a meeting at the State Office Building, Bismarck, North Dakota, on March 23, 2009. Lt. Governor Jack Dalrymple, representing Governor John Hoeven, Chairman, called the meeting to order at 1:30 P.M., and requested Dale L. Frink, State Engineer, and Chief Engineer-Secretary to the State Water Commission, to call the roll. Lt. Governor Dalrymple announced a quorum was present.

STATE WATER COMMISSION MEMBERS PRESENT:

Lt. Governor Jack Dalrymple, representing Governor John Hoeven, Chairman
Ken Junkert, representing Roger Johnson, Commissioner,
North Dakota Department of Agriculture, Bismarck
Arne Berg, Member from Devils Lake
Maurice Foley, Member from Minot
Jack Olin, Member from Dickinson
Harley Swenson, Member from Bismarck
Robert Thompson, Member from Page

STATE WATER COMMISSION MEMBERS ABSENT:

Larry Hanson, Member from Williston
Douglas Vosper, Member from Nече

OTHERS PRESENT:

Dale L. Frink, State Engineer, and Chief Engineer-Secretary,
North Dakota State Water Commission, Bismarck
State Water Commission Staff
Approximately 50 people interested in agenda items

The attendance register is on file with the official minutes.

The meeting was recorded to assist in compilation of the minutes.

CONSIDERATION OF AGENDA

announced the agenda approved as presented.

There being no additional items for the agenda, Lt. Governor Dalrymple an-

**CONSIDERATION OF DRAFT MINUTES
OF DECEMBER 5, 2008 STATE WATER
COMMISSION MEETING - APPROVED**

The draft minutes of the December 5, 2008 State Water Commission meeting were approved by the following motion:

It was moved by Commissioner Thompson, seconded by Commissioner Foley, and unanimously carried, that the draft minutes of the December 5, 2008 State Water Commission meeting be approved as prepared.

**CONSIDERATION OF DRAFT MINUTES
OF DECEMBER 17, 2008 STATE WATER
COMMISSION AUDIO CONFERENCE
CALL MEETING - APPROVED**

The draft minutes of the December 17, 2008 State Water Commission audio conference call meeting were approved by the following motion:

It was moved by Commissioner Thompson, seconded by Commissioner Foley, and unanimously carried, that the draft minutes of the December 17, 2008 State Water Commission audio conference call meeting be approved as prepared.

**STATE WATER COMMISSION
BUDGET EXPENDITURES,
2007-2009 BIENNIUM**

In the 2007-2009 biennium, the State Water Commission has two line items - administrative and support services, and water and atmospheric resources expenditures. The allocated program expenditures for the period ending January 31, 2009, reflecting 79 percent of the 2007-2009 biennium, were presented and discussed by David Laschkewitsch, State Water Commission accounting manager. The expenditures, in total, are within the authorized budget. **SEE APPENDIX "A"**

The Contract Fund spreadsheet, attached hereto as **APPENDIX "B"**, provides information on the committed and uncommitted funds from the Resources Trust Fund, the Water Development Trust Fund, and the potential bond proceeds. The total approved for projects is \$80,398,348, leaving a balance of \$29,624,782 available to commit to projects.

**RESOURCES TRUST FUND
AND WATER DEVELOPMENT
TRUST FUND REVENUES,
2007-2009 BIENNIUM**

Oil extraction tax deposits into the Resources Trust Fund total \$63,037,420 and are currently \$34,985,173, or 124.7 percent ahead of the budgeted revenues.

Deposits into the Water Development Trust Fund total \$17,306,965 and are currently \$1,477,330, or 9.3 percent ahead of budgeted revenues. A reduction of approximately \$6,000,000 in the April, 2009 payment is anticipated due to the passage of Measure 3 in November, 2008.

Staff memorandums, dated March 11, 2009, and attached hereto as **APPENDIX "C"**, provides information relating to the proposed federal funding and the Resources Trust Fund. Secretary Frink referenced legislation that is being considered and revenue forecast/projections which would affect the Resources Trust Fund for the 2007-2009 biennium.

**STATE WATER COMMISSION
BUDGET - 2009-2011 BIENNIUM**

The State Water Commission submitted its 2009-2011 biennium budget to the Office of Management and Budget in November, 2008. On December 3, 2008, Governor Hoeven released the executive budget recommendation for the 2009-2011 biennium. The executive recommendation for the State Water Commission totaled \$311,001,398, which included \$12,493,198 in general fund dollars for agency operations:

Administrative and Support Services	\$ 2,849,027
Water and Atmospheric Resources	<u>\$ 308,152,371</u>
Total	\$ 311,001,398
General Funds	\$ 12,493,198
Federal Funds	\$ 55,080,945
Other Funds	<u>\$ 243,427,255</u>
Total	\$ 311,001,398

House Bill 1020 was presented to the Education and Environment division of the House Appropriations committee on January 21, 2009, and passed the House of Representatives on February 19, 2009. Engrossed House Bill 1020 was presented to the Senate Appropriations committee on March 11, 2009.

Secretary Frink presented and discussed the proposed project allocations for the 2009-2011 biennium, which are included in **APPENDIX "D"**.

**AMERICAN RECOVERY AND
REINVESTMENT ACT OF 2009 -
APPROVAL OF PROJECT PRIORITY
LIST IN INTENDED USE PLAN,
DATED MARCH 10, 2009
(SWC File AS/HEA)**

President Obama signed the American Recovery and Reinvestment Act of 2009 (ARRA) into law on February 17, 2009 to provide funding assistance to water systems for capital improvement projects which could immediately proceed into construction creating jobs, promoting economic recovery, and furthering the public health protection objectives under the Safe Drinking Water Act. The goal is to enter into binding commitments for

projects that will proceed to construction or award of construction contracts by February 17, 2010. Funding is in the form of a grant and loan program administered by the U.S. Environmental Protection Agency (EPA) through the North Dakota Department of Health's Drinking Water State Revolving Loan Fund program.

David Brushwein, North Dakota Department of Health, presented the Intended Use Plan, dated March 10, 2009 and attached hereto as **APPENDIX "E"**, which is required by the EPA as part of the capitalization grant application process, for the State Water Commission's consideration. The plan includes a comprehensive project priority list and fundable list that are based on an EPA-approved priority ranking system. North Dakota is eligible to receive \$19,500,000 as the supplemental appropriation enacted under the ARRA. Public hearings were held on the draft Intended Use Plan on March 16, 2009; no comments were received.

It was the recommendation of Secretary Frink that the State Water Commission approve the comprehensive project priority list and fundable list as shown on the Intended Use Plan for the ARRA 2009 funds, and authorize the North Dakota Department of Health to administer and disburse ARRA funds pursuant to the project list and Intended Use Plan through the North Dakota Drinking Water State Revolving Fund program.

It was moved by Commissioner Foley and seconded by Commissioner Berg that the State Water Commission approve the comprehensive project priority list and fundable list as shown on the Intended Use Plan for the American Recovery and Reinvestment Act (ARRA) 2009 funds, and authorize the North Dakota Department of Health to administer and disburse the ARRA funds pursuant to the project list and Intended Use Plan through the North Dakota Drinking Water State Revolving Fund program.

Commissioners Berg, Foley, Ken Junkert representing Commissioner Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

**SAFE DRINKING WATER ACT -
APPROVAL OF AMENDED PROJECT
PRIORITY LIST AND AMENDED
FUNDABLE LIST FOR FISCAL YEAR
2009 INTENDED USE PLAN, DATED
MARCH 10, 2009
(SWC File AS/HEA)**

The Drinking Water State Revolving Loan Fund was authorized by Congress in 1996 under the Safe Drinking Water Act with the intention of assisting public water systems in complying with the Act. Funding in North Dakota for public water systems is in the form of a loan program administered by the Environmental Pro-

tection Agency through the North Dakota Department of Health. North Dakota Century Code ch. 61-28.1, Safe Drinking Water Act, gives the Department the powers and duties to administer and enforce the Safe Drinking Water program and to administer the program.

Section 1452(b) of the Safe Drinking Water Act requires each state to annually prepare an Intended Use Plan. The plan is to describe how the state intends to use the funds to meet the program objectives and further the goal of protecting public health. A public review period is required prior to submitting the annual plan to the Environmental Protection Agency as part of the capitalization grant application process. The North Dakota Department of Health held public hearings on the draft Intended Use Plan on November 25, 2008; no comments were received.

The State Water Commission's role in the program is defined in subsections 3 and 4 of ch. 61-28.1-12. Subsection 3 states that the Department shall administer and disburse funds with the approval of the State Water Commission. Subsection 4 states that the Department shall establish assistance priorities and expend grant funds pursuant to the priority list for the Drinking Water State Revolving Loan Fund after consulting with and obtaining the approval of the State Water Commission.

On December 5, 2008, the State Water Commission approved the comprehensive project priority list and fundable list for Fiscal Year 2009 as listed in the Intended Use Plan, dated November 25, 2008, and authorized the North Dakota Department of Health to administer and disburse Fiscal Years 1997 through 2009 program funds pursuant to the Fiscal Year 2009 Intended Use Plan. The comprehensive project priority list includes 96 projects, with a cumulative total project cost of \$275,400,000 for Fiscal Years 1997 through 2009. The fundable list for Fiscal Year 2009 includes 8 projects at a cost of \$25,600,000.

On March 23, 2009, the State Water Commission approved the comprehensive project priority list and fundable list as shown on the Intended Use Plan for the American Recovery and Reinvestment Act (ARR) 2009 funds, and authorized the North Dakota Department of Health to administer and disburse the ARRA funds pursuant to the project list and Intended Use Plan through the North Dakota Drinking Water State Revolving Fund program.

It was the recommendation of Secretary Frink that the State Water Commission approve the amended comprehensive project priority list and amended fundable list for the final fiscal Year 2009 Intended Use Plan, dated March 10, 2009 and attached hereto as **APPENDIX "F"**, and authorize the North Dakota Department of Health to administer and disburse the North Dakota Drinking Water State Revolving Fund program funds pursuant to the final Fiscal Year 2009 Intended Use Plan.

It was moved by Commissioner Foley and seconded by Commissioner Berg that the State Water Commission approve the amended comprehensive project priority list and amended fundable list for the final fiscal Year 2009 Intended Use Plan, dated March 10, 2009, and authorize the North Dakota Department of Health to administer and disburse the North Dakota Drinking Water State Revolving Fund program funds pursuant to the final Fiscal Year 2009 Intended Use Plan.

Commissioners Berg, Foley, Ken Junkert representing Commissioner Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

**2009 SPRING FLOOD REPORT
(SWC Project No. 1431-08)**

summarized in a State Water Commission staff memorandum dated March 11, 2009, and attached hereto as **APPENDIX "G"**.

The 2009 spring flood outlook and hydrologic conditions experienced state-wide were discussed, which are

Because of legislative commitments, Lt. Governor Dalrymple relinquished the chair to the State Water Commission Vice Chair, Commissioner Olin.

**STATE WATER COMMISSION COST SHARE POLICIES AND PROCEDURES - APPROVALS RELATING TO DAM REMOVAL/BREACH PROJECTS; AND MUNICIPAL, RURAL AND INDUSTRIAL WATER SUPPLY PROGRAM; DEFERRAL RELATING TO COST SHARE PERCENTAGE INCREASE
(SWC Project 1753)**

The State Water Commission's cost share policy committee and others met on March 23, 2009. The committee presented the following recommendations (*italicized*) for the State Water Commission's consideration:

Dam removal/breach projects:

The State Water Commission provide cost share for up to 65 percent of the eligible items of any cost share application approved for a dam removal/dam breach project.

Upon proposed project review, the cost share percentage of up to 65 percent may be adjusted to account for any contributing partners. Each project will be evaluated on, but not limited to, impacts to water rights; reservoir sediment disposal or stabilization; stream bank erosion; the plan for draining the reservoir; method used to breach the dam; and, if applicable, sociological, ecological, and historical impacts. A North Dakota State Water Commission dam removal/breach permit is required.

It was the recommendation of Secretary Frink that the State Water Commission approve the proposed modification to the cost share policy, procedures, and general requirements guidelines to allow dam removal/breach projects as eligible for cost share as recommended.

It was moved by Commissioner Swenson and seconded by Commissioner Berg that the State Water Commission provide cost share for up to 65 percent of the eligible items of any cost share application approved for a dam removal/dam breach project.

Commissioners Berg, Foley, Ken Junkert representing Commissioner Johnson, Olin, Swenson, and Thompson voted aye. There were no nay votes. Commissioner Olin announced the motion unanimously carried.

Municipal, Rural and Industrial (MR&I) Water Supply Program:

The Municipal, Rural and Industrial (MR&I) Water Supply Program shall be administered according to the policies, procedures, and general requirements as set forth in the North Dakota Administrative Code Article 89-12.

It was the recommendation of Secretary Frink that the State Water Commission approve the proposed modification to the cost share policy, procedures, and general requirements guidelines to include the Municipal, Rural and Industrial (MR&I) Water Supply Program as recommended.

It was moved by Commissioner Thompson and seconded by Commissioner Berg that the cost share policy, procedures, and general requirements be modified to include the Municipal, Rural and Industrial (MR&I) Water Supply Program as recommended.

Commissioners Berg, Foley, Ken Junkert representing Commissioner Johnson, Olin, Swenson, and Thompson voted aye. There were no nay votes. Commissioner Olin announced the motion unanimously carried.

Cost share percentage increase of 10 percent on construction items and eliminate cost share assistance on engineering items:

Cost share policy, procedures, and general requirements guidelines be modified to allow for a cost share percentage Increase of 10 percent on construction items, and to eliminate cost share assistance on any and all engineering items to include, but not limited to surveying, soil testing, archeological, cultural, and geotechnical exploration, and contract administration, effective July 1, 2009.

The following cost share percentages would be increased as follows:

- 1) drains, channels, diversion projects - 45 percent of eligible construction items
- 2) rural/farmstead ring dikes - 60 percent of eligible construction items limited to a maximum of \$40,000 per ring dike
- 3) water supply projects - 60 percent of eligible construction items
- 4) flood control projects - 60 percent of eligible construction items
- 5) dam safety repair projects - 65 percent of eligible construction items
- 6) recreation projects - 40 percent of eligible construction projects
- 7) irrigation projects - 50 percent of eligible construction projects

Commissioner Thompson encouraged the cost share policy committee to further review issues relating to water supply projects, and suggested that the State Water Commission defer action on the recommendations at this meeting.

It was the recommendation of Secretary Frink that the cost share policy, procedures, and general requirements guidelines be modified to allow for a cost share percentage increase of 10 percent on construction items, and eliminate cost share assistance on engineering items as recommended.

It was moved by Commissioner Foley and seconded by Commissioner Swenson that the State Water Commission approve modifications to the cost share policy, procedures, and general requirements guidelines to allow for a cost share percentage Increase of 10 percent on construction items, and eliminate cost share assistance on any and all engineering items to include, but not limited to surveying, soil testing, archeological, cultural, and geo-

technical exploration, and contract administration, effective July 1, 2009.

Commissioners Berg, Foley, Olin, and Swenson voted aye. Commissioner Thompson, and Ken Junkert representing Commissioner Johnson voted nay. Recorded votes were 4 ayes; 2 nays. Commissioner Olin announced the motion failed due to the required affirmative votes of five members necessary to bind the Commission.

***SWEETBRIAR CREEK
DAM (MORTON COUNTY) -
APPROVAL OF STATE COST
PARTICIPATION (\$683,400)
(SWC Project No. 642-01)***

Sweetbriar Creek Dam is located in Morton county approximately 17 miles west of Mandan, ND. The Department of Transportation (DOT) built the dam in 1960, and Morton county, the North Dakota Game and Fish Department, and the State Water Commission are responsible for maintenance of the dam. Sweetbriar Lake, which was created by the damming of Sweetbriar Creek, has a surface area of 250 acres, is approximately 40 feet deep, and has a volume of 2,000 - 3,000 acre-feet of water. The lake was drawn down several feet in 2005 to alleviate pressure on the dam.

In the spring of 2002, a major crack in the upstream face of the concrete drop inlet spillway was discovered by personnel from the DOT. The concrete wall was repaired in 2003. In 2004, excessive seepage through the dam forced engineers to draw down the reservoir to alleviate pressure on the dam.

Extensive research, analysis and discussions have taken place over the past several years about the dam's safety issues including uncontrolled seepage, structural concerns with the spillway stilling basin walls, and inadequate spillway capacity.

In November, 2007, the State Water Commission staff completed a report which included updated hydrology, dam break analysis, and reclassifying the dam to a Class V (over 40 feet in height) high hazard dam from a Class IV medium hazard dam. This change in classification was a result of updated hydrology (increased inflows and volumes from the original design hydrology) and the residential development downstream of the structure. With the change in hazard classification, the design criteria for the spillway capacity, velocity limits and freeboard requirements will also change. Increasing the spillway capacity will result in greater damage potential (both lives and economic losses) due to larger and more frequent non-failure flows. Although flood control is not the purpose of the dam, it does provide some unintended flood protection to downstream residences.

The project consultant, Bartlett and West Engineers, Inc./Boyle Engineering Corporation, recommended the preferred alternative to address the seepage mitigation issues include conduit and stilling basin repair on Sweetbriar Creek Dam without increasing the spillway capacity. Specific authorization No. 5 design documents would include the installation of toe drains to lower the phreatic surface below the dam and outlet culvert, and an outlet culvert sand filter-protected drain to reduce seepage impacts to the culvert and stilling basin structure. The project engineer's total cost estimate is \$1,381,800. Proposed cost share arrangements include the entities of: Morton County - \$15,000; and the State Water Commission and the North Dakota Game and Fish Department would each provide 50 percent of the remaining balance (\$1,366,800) of \$683,400 each.

Previous State Water Commission approvals include: March 5, 2003, an allocation of \$43,333, of which \$25,333 was from the funds appropriated to the State Water Commission in the 2001-2003 biennium, and \$18,000 was for in-kind services provide by the Commission; May 11, 2005, an additional allocation of \$4,010.33, from the funds appropriated to the State Water Commission in the 2003-2005 biennium; and November 1, 2005, an additional allocation of \$20,000 to proceed with the engineering process from the funds appropriated to the State Water Commission in the 2005-2007 biennium. (The allocated \$20,000 to proceed with the engineering process was not expended.) On December 9, 2005, the State Water Commission approved an allocation of \$80,000 for consultant services with Bartlett and West Engineers, Inc./Boyle Engineering Corporation.

It was the recommendation of Secretary Frink that the State Water Commission authorize Bartlett and West Engineers, Inc./Boyle Engineering Corporation to proceed to develop Specific Authorization No. 5 for seepage mitigation, conduit and stilling basin repairs on Sweetbriar Creek Dam; and that the State Water Commission approve state cost participation at 50 percent of the eligible costs, not to exceed an allocation of \$683,400 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), for the Sweetbriar Creek Dam.

It was moved by Commissioner Berg and seconded by Commissioner Swenson that the State Water Commission authorize Bartlett and West Engineers, Inc./Boyle Engineering Corporation to develop Specific Authorization No. 5 for seepage mitigation, conduit and stilling basin repairs on Sweetbriar Creek Dam; and that the State Water Commission approve state cost participation at 50 percent of the eligible costs, not to exceed an allocation of \$683,400 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), for the Sweetbriar Creek Dam. This action is contingent upon the availability of funds.

Commissioners Berg, Foley, Ken Junkert representing Commissioner Johnson, Olin, Swenson, and Thompson voted aye. There were no nay votes. Commissioner Olin announced the motion unanimously carried.

HARMON LAKE RECREATIONAL FACILITY (SQUARE BUTTE DAM NO. 6) - APPROVAL OF STATE COST PARTICIPATION (\$935,639) (SWC Project No. 1921)

A request from the Morton County Water Resource District was presented for the State Water Commission's consideration for state cost participation for the construction of the Harmon Lake recreational facility. The project is

located approximately nine miles north of Mandan on Otter Creek in the Square Butte Creek watershed. The project is part of an overall comprehensive plan for flood control and watershed protection in the Square Butte watershed. Three flood control dams and a floodway were constructed prior to this project; Dam No. 6 and associated recreation features are presently under construction. When the Harmon Lake project is complete, a dam 74 feet in height will create a lake of 145 surface acres with a maximum depth of 38 feet. Local interest is extremely positive as the anticipated spring drainage is predicted to fill the lake during the spring and early summer of 2009.

Construction of the flood control dam structure was completed in 2007 in cooperation with the Natural Resource Conservation Service, the Morton County Water Resource District, and the State Water Commission. Additional support was also provided from the Oliver County Water Resource District, the city of Mandan, and the North Dakota Game and Fish Department.

The project engineer's cost estimate is \$6,300,000, of which \$2,807,198 is determined as eligible for state cost participation as a recreation project at 33.33 percent of the eligible costs (\$935,639). Proposed cost share arrangements include the Natural Resources Conservation Service - \$2,807,198; the State Water Commission - \$935,639; and the Morton County Water Resource District - \$2,557,163. The request before the State Water Commission is for a 33.33 percent cost share participation in the amount of \$935,639.

Wade Bachmeier, chairman of the Morton County Water Resource District, and Ron Sando, project consultant, provided technical information relative to the project, and requested the State Water Commission's favorable consideration of the request for funding.

It was the recommendation of Secretary Frink that the State Water Commission approve state cost participation as a recreation project at 33.33 percent of the eligible costs, not to exceed an allocation of \$935,639 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2010), to the Morton County Water Resource District for the Harmon Lake recreational facility.

It was moved by Commissioner Thompson and seconded by Commissioner Foley that the State Water Commission approve state cost participation as a recreation project at 33.33 percent of the eligible costs, not to exceed an allocation of \$935,639 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2010), to the Morton County Water Resource District for the Harmon Lake recreational facility. This motion is contingent upon the availability of funds.

Commissioners Berg, Foley, Ken Junkert representing Commissioner Johnson, Olin, Swenson, and Thompson voted aye. There were no nay votes. Commissioner Olin announced the motion unanimously carried.

***NORTH DAKOTA NATURAL
RESOURCES TRUST -
APPROVAL OF FINAL
PAYMENT (\$151,564)
(SWC Project No. 1826)***

In 1986, the Garrison Diversion project was reformulated by Congress. Two new features of the project were the Municipal, Rural and Industrial (MR&I) Water Supply program and the North Dakota Wetlands Trust. Both features are widespread programs benefiting much of the state. The Dakota Water Resources Act of 2000 changed the name of the North Dakota Wetlands Trust to the North Dakota Natural Resources Trust.

The North Dakota Natural Resources Trust is a program that provides for the preservation, enhancement, restoration, and management of wetlands and associated wildlife habitat in the state. The Natural Resources Trust operates off of the interest from a trust fund that will eventually reach \$13.2 million. Of the \$13.2 million, \$12.0 million is to come from the federal government and \$1.2 million from the State of North Dakota.

In 1993, the Garrison Diversion Conservancy District, the State Water Commission, and the North Dakota Game and Fish Department entered into a memorandum of agreement in which the three entities agreed to share equally the state's commitment in accordance with the terms set out in a February 14, 1991 agreement between the State of North Dakota, the Bureau of Reclamation, and the North Dakota Wetlands Trust. That agreement provides that the state's share shall be based on 0.15 percent of the federal Garrison Diversion Unit (GDU) appropriation. Of the State Water Commission's \$400,000 obligation, \$248,436 has been contributed, leaving a balance of \$151,564.

Keith Trego, North Dakota Natural Resources Trust executive director, explained that the state contributions in the past have been made according to an agreed upon repayment schedule that runs through

2013. The Natural Resources Trust can only use earnings generated by the Trust account. The current market decline has dropped the account value below the amounts deposited and has seriously compromised the Trust's ability to fulfill its mission using the business model created under the 1986 Garrison Reformulation Act. A request from the Natural Resources Trust was presented for the State Water Commission's consideration to provide payment of the Commission's remaining one-third share in the amount of \$151,564.

Commissioner Olin disclosed that he currently serves on the North Dakota Natural Resources Trust board of directors, and requested that an abstention vote be recorded for him.

It was the recommendation of Secretary Frink that the State Water Commission approve the final payment of the Commission's remaining one-third share to the North Dakota Natural Resource Trust, not to exceed an allocation of \$151,564 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020).

It was moved by Commissioner Foley and seconded by Commissioner Swenson that the State Water Commission approve final payment of the Commission's remaining one-third share to the North Dakota Natural Resources Trust, not to exceed an allocation of \$151,564 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020). This action is contingent upon the availability of funds.

A substitute amendment to the original motion was offered by Commissioner Berg and seconded by Ken Junkert representing Commissioner Roger Johnson that the State Water Commission approve an allocation of \$31,995.49 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), for one-third of the state's Fiscal Year 2009 contribution to the North Dakota Natural Resources Trust, and that payment of the remaining balance be deferred until the 2009-2011 biennium.

Commissioner Olin called the question on the substitute amendment to the original motion, and asked for a roll call vote:

Commissioners Berg, Thompson, and Ken Junkert representing Commissioner Roger Johnson voted aye. Commissioners Foley and Swenson voted nay. Commissioner Olin abstained from voting. Recorded votes were 3 ayes; 2 nays; and 1 abstention. Commissioner Olin announced the substitute amendment to the original motion failed due to the required affirmative votes of five members necessary to bind the Commission.

Commissioner Olin then called the question on the original motion, and asked for a roll call vote:

Commissioners Berg, Foley, Ken Junkert representing Commissioner Johnson, Swenson, and Thompson voted aye. There were no nay votes. Commissioner Olin abstaining from voting. Commissioner Olin announced the motion carried.

**FORT BERTHOLD INDIAN
RESERVATION IRRIGATION
FEASIBILITY STUDY - APPROVAL OF
STATE COST PARTICIPATION (\$80,000)
(SWC Project No. 281)**

A request from the Three Affiliated Tribes was presented for the State Water Commission's consideration for state cost participation for an irrigation feasibility study on the Fort Berthold Indian Reservation of North Dakota. The feasibility study would provide the Three Affiliated Tribes with the basis to pursue a water distribution project which will provide economic benefits and stability to the Fort Berthold reservation; and, would be a first step in a process of water quantification for the reservation to document, quantify, legitimize, and secure water for the potential needs of the reservation including agricultural production, domestic and municipal water demand, industrial and commercial development, and other uses. The total estimated cost is \$100,000, of which \$80,000 is for the irrigation feasibility study, and \$20,000 for the process of water quantification. The request before the State Water Commission is for a 100 percent state cost participation in the amount of \$100,000.

Secretary Frink explained that the quantification of Indian water rights is a lengthy and complex process, and he recommended that the request for state cost participation (\$20,000) be deferred at this time.

It was the recommendation of Secretary Frink that the State Water Commission approve state cost participation as an irrigation project at 50 percent of the eligible costs, not to exceed an allocation of \$40,000 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), to the Three Affiliated Tribes to develop the feasibility study for an irrigation project on the Fort Berthold Reservation of North Dakota.

Camilla Gosnell, program specialist for the Three Affiliated Tribes, appeared before the State Water Commission to provide specific information to support their funding request. Ms. Gosnell also addressed issues relating to unemployment of tribal members, the lack of opportunities for high school and college graduates, and the impacts from conditions to realize the potential of tribal lands for agricultural production.

It was moved by Commissioner Berg and seconded by Commissioner Foley that the State Water Commission approve state cost participation as an irrigation project at 100 percent of the eligible costs, not to exceed an allocation of \$80,000 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), to the Three Affiliated Tribes to develop the feasibility study for an irrigation project on the Fort Berthold Reservation of North Dakota. This action is contingent upon the available of funds.

Commissioners Berg, Foley, Ken Junkert representing Commissioner Johnson, Olin, Swenson, and Thompson voted aye. There were no nay votes. Commissioner Olin announced the motion unanimously carried.

***WILD RICE RIVER SNAGGING
AND CLEARING PROJECT
(RICHLAND COUNTY) -
APPROVAL OF STATE COST
PARTICIPATION (\$36,500)
(SWC Project No. 1842)***

A request from the Richland County Water Resource District was presented for the State Water Commission's consideration for state cost participation in their project to snag and clear approximately seven miles of the Wild Rice River. The project will snag and clear

the river from County Road 30 east to the railroad tracks (Belford Township, Sections 7, 18, 17, 16, and 21, and Liberty Grove, Sections 2, 3, 11, 12, and 13), and by the Richland church (Eagle Township, Section 11).

The proposed snagging and clearing work will include the removal of all fallen trees, standing trees in eminent danger of falling into the channel, driftwood, snags, loose stumps and trunks, and standing stumps which are encountered within the river channel and which are lodged and/or leaning on the immediate bank slopes between upstream and downstream limits. All snagged material will be properly disposed.

The project engineer's cost estimate is \$73,000, of which all costs are determined as eligible for state cost participation as a snagging and clearing project at 50 percent of the eligible costs (\$36,500). The request before the State Water Commission is for a 50 percent state cost participation in the amount of \$36,500.

It was the recommendation of Secretary Frink that the State Water Commission approve state cost participation as a snagging and clearing project at 50 percent of the eligible costs, not to exceed an allocation of \$36,500 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), to the Richland County Water Resource District for the Wild Rice River snagging and clearing project.

It was moved by Commissioner Swenson and seconded by Commissioner Thompson that the State Water Commission approve state cost participation as a snagging and clearing project at 50 percent of the eligible costs, not to exceed an allocation of \$36,500 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), to the Richland County Water Resource District for the Wild Rice River snagging and clearing project. This action is contingent upon the availability of funds.

Commissioners Berg, Foley, Ken Junkert representing Commissioner Johnson, Olin, Swenson, and Thompson voted aye. There were no nay votes. Commissioner Olin announced the motion unanimously carried.

RED RIVER VALLEY WATER SUPPLY PROJECT - APPROVAL OF RELEASE OF \$370,000 (FROM \$1,800,000 PREVIOUSLY APPROVED) FOR DEVELOPMENT OF PREFERRED ALTERNATIVE (SWC Project No. 1912)

On March 17, 2008, the State Water Commission approved an allocation not to exceed \$1,800,000 in the 2007-2009 biennium to the Garrison Diversion Conservancy District for the continued development of the preferred alternative for the Red River Valley Water Supply project. This action was contingent upon

receipt of the Record of Decision from the U.S. Department of the Interior. The Record of Decision was scheduled to be issued 30 to 90 days from the date that the final environmental impact statement (EIS) was made available to the public, however, the U.S. State Department requested that the Bureau of Reclamation delay signing the Record of Decision until discussions with Canada have been concluded.

A report to congress was transmitted by the Secretary of the Interior selecting the GDU import to the Sheyenne River alternative as the proposed project to meet the water needs of the Red River valley. The Secretary of the Interior has also determined that the proposed treatment would comply with the Boundary Waters Treaty of 1909. Since the proposed project uses Missouri River water, congressional authorization is required before construction can begin on the project. The Garrison Diversion Conservancy District board of directors and the Lake Agassiz Water Authority board of directors have unanimously voted to continue development of the project as described in the 2009 work plan while the congressional delegation is gaining authorization.

The 2009 work plan for the development of the preferred alternative contains six major planning efforts as follows: operational plan, right-of-way acquisition services, land owner payments for right-of-way options, permitting and environmental services, prefinal design, and financial planning. The work plan task orders total \$4,245,000.

On September 30, 2008, the State Water Commission approved the release of up to \$630,000 (of the \$1,800,000 previously authorized on March 17, 2008) to fund the operational plan engineering task order while awaiting the issuance of the Record of Decision.

Dave Koland, general manager for the Garrison Diversion Conservancy District, explained that the operational plan is an essential effort required to develop the terms of the water service contracts and to establish the design criteria for the prefinal design task order. A request from the Garrison Diversion Conservancy District was presented for the State Water Commission's consideration to increase the \$630,000 spending limit to \$1,000,000 (an additional \$370,000 from their general fund allocation of \$1,800,000 previously authorized on March 17, 2008) to fund the completion of the operational plan and begin the permitting and environmental, financial planning, and prefinal design task orders.

It was the recommendation of Secretary Frink that the State Water Commission increase the \$630,000 spending limit to \$1,000,000 (an additional \$370,000 of the \$1,800,000 previously authorized on March 17, 2008) to the Garrison Diversion Conservancy District to fund the completion of the operational plan and begin the permitting and environmental, financial planning, and prefinal design task orders for the continued development of the Red River Valley Water Supply project. Secretary Frink explained that the Commission's approval of \$1,800,000 on March 17, 2008 was contingent upon the availability of funds, and receipt of the Record of Decision from the United States Department of the Interior. He recommended that the language and receipt of the Record of Decision from the United States Department of the Interior be waived for the release of \$1,000,000 from the general fund allocation (\$1,800,000) approval.

It was moved by Commissioner Foley and seconded by Ken Junkert representing Commissioner Johnson that the State Water Commission approve increasing the \$630,000 spending limit to \$1,000,000 (an additional \$370,000 from the \$1,800,000 previously authorized on March 17, 2008) to the Garrison Diversion Conservancy District to fund the completion of the operational plan and begin the permitting and environmental, financial planning, and prefinal design task orders for the further development of the Red River Valley Water Supply project. This action is contingent upon the availability of funds; and that the language included in the motion passed on March 17, 2008 contingent upon receipt of the Record of Decision from the United States Department of the Interior shall hereby be waived for the release of \$1,000,000 from the general fund allocation (\$1,800,000) approval.

Commissioners Berg, Foley, Ken Junkert representing Commissioner Johnson, Olin, Swenson, and Thompson voted aye. There were no nay votes. Commissioner Olin announced the motion unanimously carried.

**CONSIDERATION OF STATE
COST PARTICIPATION REQUESTS -
ACTION DEFERRED**

The following requests were presented for the State Water Commission's consideration for state cost participation. Because of the potential for flooding in

2009, the need to accelerate flood-related projects, and the decline in revenues into the Resources Trust Fund, it was the recommendation of Secretary Frink that the State Water Commission defer action at this meeting on each of the following requests:

**Cass County Drain No. 12 Partial Improvement Reconstruction -
(SWC Project No. 1068):**

The Rush River Water Resource District submitted a request for state cost participation in the District's project for the improvement reconstruction of a portion of Cass County Drain No. 12. The proposed project consists of reconstructing the downstream end of the drain by flattening the side slopes allowing for drainage improvements.

The project engineer's cost estimate is \$2,000,000, of which \$1,895,000 is determined eligible for state cost participation as a rural flood control project at 35 percent of the eligible costs (\$663,250).

**Cass County Drain No. 13 Area Improvements -
(SWC Project No. 1069):**

The North Cass Water Resource District submitted a request for state cost participation in the District's project for the improvement reconstruction of portions of Cass County Drain No. 13. The drain sustained intermittent bank failures during the 2006 spring flood and also had some pre-existing slides.

The project engineer's cost estimate is \$645,000, of which \$427,079 is determined eligible for state cost participation as a rural flood control project at 35 percent of the eligible costs (\$149,478).

**Cass County Drain No. 14 Area Improvements -
(SWC Project No. 1070):**

The Maple River Water Resource District submitted a request for state cost participation in the District's project for the improvement of an area of Cass County Drain No. 14. Slope failures occurred during the 2006 spring flood and the slopes will be flattened through the slide areas and adjacent channel to provide a more stable cross section.

The project engineer's cost estimate is \$1,665,000, of which \$1,333,448 is determined eligible for state cost participation as a rural flood control project at 35 percent of the eligible costs (\$466,707).

**Cass County Drain No. 37 Partial Improvement Reconstruction -
(SWC Project No. 1088):**

The Maple River Water Resource District submitted a request for state cost participation in the District's project to improve a section of Cass County Drain No. 37. In 2007, a reconstruction project was approved for Drain No. 37 but was disregarded as the design plans were revised. The existing channel location is deteriorating and requires reconstruction to provide a more stable channel bottom and side slopes.

The project engineer's cost estimate is \$525,000, of which \$434,301 is determined eligible for state cost participation as a rural flood control project at 35 percent of the eligible costs (\$152,005).

**Trail County Drain No. 13 Inlet Extension Project -
(SWC Project No. 1232):**

The Traill County Water Resource District submitted a request for state cost participation in the District's project to extend Traill County Drain No. 13 upstream through Section 32 of Ervin township. The current township ditch is inadequate to pass flows through the section without inundating the adjacent property.

The project engineer's cost estimate is \$65,000, of which \$64,000 is determined eligible for state cost participation as a rural flood control project at 35 percent of the eligible costs (\$22,400).

**Walsh County Assessment Drain No. 73 and 73-1 Construction -
(SWC Project No. 1953):**

The Walsh County Water Resource District submitted a request for state cost participation in the District's project to construct Walsh County Assessment Drain No. 73. The project consists of constructing a six-mile long drain to address sheetwater runoff from cropland and to reduce flood damages to agricultural properties.

The project engineer's cost estimate is \$293,033, of which \$253,033 is determined eligible for state cost participation as a rural flood control project at 35 percent of the eligible costs (\$88,562).

**Mott Dam Emergency Action Plan -
(SWC Project No. 249):**

The Hettinger County Water Resource District submitted a request for state cost participation for the development of an emergency action plan for Mott Dam. North Dakota Century Code Section 61-03-21 requires the operator of a reservoir, with a storage capacity greater than 1,000 acre-feet of water, to submit an annual operations plan to the Office of the State Engineer which include the emergency procedures and warning plans.

The project engineer's cost estimate is \$38,800, all of which is determined eligible for state cost participation as an emergency action plan at 80 percent of the eligible costs, but limited to the cost share program criteria of \$25,000.

**Trail County Drain No. 19 Outlet Improvements -
(SWC Project No. 1238):**

The Traill County Water Resource District submitted a request for state cost participation for the District's project to extend Traill County Drain No. 19 through the natural channel serving as the outlet to the assessment drain. The State Water Commission conditionally allocated \$250,000 for the project, but the assessment vote failed in the fall of 2007; the obligated funds were returned to the appropriate account.

In October of 2007, due to an emergency situation, the District completed work involving stabilization of the coulee near the bridge crossing between Sections 3 and 4 of Roseville Township. The District requested state cost participation as a rural flood control project at 35 percent of the eligible costs (\$53,884).

It was moved by Ken Junkert representing Commissioner Johnson and seconded by Commissioner Berg that the State Water Commission concur with the secretary to the State Water Commission's recommendation and that the previously-listed project requests for state cost participation be deferred at this meeting.

Commissioners Berg, Foley, Ken Junkert representing Commissioner Johnson, Olin, Swenson, and Thompson voted aye. There were no nay votes. Commissioner Olin announced the motion unanimously carried.

***NORTHWEST AREA WATER
SUPPLY (NAWS) PROJECT -
STATUS REPORT
(SWC Project No. 237-04)***

Michelle Klose, project manager for the Northwest Area Water Supply (NAWS) project, provided the following project status report:

NAWS Environmental Impact Statement: The Bureau of Reclamation released the final environmental impact statement (EIS) on December 5, 2008; the Record of Decision (ROD) was executed on January 15, 2009. The treatment alternative selected in the ROD is a combination of the No Action Alternative using chlorine disinfection, and the Basic Treatment Alternative providing ultraviolet treatment in addition. The biota treatment construction costs are estimated at \$17.5 million.

Manitoba and Missouri Lawsuit: The notice of availability of the EIS, showing the additional environmental review, was presented to the federal court on December 17, 2008. On February 12, 2009, a joint state/federal proposed case management and briefing schedule was filed with the court to lay out a schedule to provide all documentation in support of lifting the injunction by the first week in June, 2009.

On February 23, 2009, as in accordance with the proposed briefing schedule, Manitoba filed additional concerns on the adequacy of the EIS. On February 24, 2009, the State of Missouri filed a new lawsuit with concerns on the adequacy of the EIS addressing depletions of the Missouri River. The new lawsuit was filed with the same court and judge as the Manitoba lawsuit. The federal court decided to consolidate the cases and keep a similar briefing schedule as filed previously with some extensions.

The Bureau of Reclamation will file the administrative record on March 27, 2009; a joint state/federal request to lift the injunction will be provided within 45 days after the administrative record is provided.

Design and Construction Contracts:

Contract 4-2A Interim: Contract 4-2A Interim involves a 2400 gallon per minute booster pump station at the HSPS/reservoir site adjacent to the Minot water treatment plant. The project will pump water to the Berthold line and Minot's south hill until contract 4-2A, high service pump station, is completed. On February 4, 2008, the State Water Commission authorized the award of contract 4-2A Interim, in the amount of \$246,250 to Construction Engineers, Ltd., Grand Forks, ND, and the notice to proceed was executed on March 7, 2008. The contract completion date was August 15, 2008. Final payment was approved on December 18, 2008.

Contract 4-2A: Contract 4-2A involves the construction of a new 2 million gallon reservoir and an 18 million gallon high service pump station adjacent to the Minot water treatment plant, as well as demolition of the existing high service pumps and backwash pumps, and the installation of new backwash pumps and controls. The project will pump water into the 36-inch pipeline installed under the NAWWS 2-2A contract and the existing Minot water distribution system. On April 23, 2008, the State Water Commission authorized the award of contract 4-2A, in the amount of \$12,435,793.58, to John T. Jones Construction, Fargo, ND, and the notice to proceed was executed on May 20, 2008. The contract completion date is December 31, 2009.

Houston Engineering denied a \$500,000 claim submitted by the contractor. John T. Jones has requested mediation of the claim; mediation is scheduled for April 1, 2009.

Contract 2-1D: This contract covers 15 miles of 36-inch pipe between the city of Max and Lake Sakakawea. The State Water Commission authorized the award of contract 2-1D on April 18, 2005 to Molstad Excavating, Grand Forks, ND. The pressure testing passed, and half of the retainage has been released. Anticipate satisfaction of the lien waivers and landowner release forms.

Contract 2-2A: The State Water Commission authorized the award of contract 2-2A to ERS Constructors, Centennial, CO, on April 19, 2007. Contract 2-2A covers 10 bores, approximately 4 miles of 24-36 inch pipe, and associated facilities within the city of Minot, which includes pipeline from the high service pump station west to the U.S. Highway 83 bypass, south to U.S. Highway 52, and to north hill. A walk through was completed on October 29, 2008 and the final punch list was generated and completed. Anticipate satisfaction of the lien waivers and landowner release forms.

Contract 2-2B: This contract includes approximately 20 miles of 10-16 inch pipe and 3 booster pump stations between Minot at U.S. Highway 52 and the city of Berthold. The State Water Commission authorized the award of contract 2-2B on

May 9, 2007 to Northern Improvement Co., Fargo, ND. The final payment was approved on January 14, 2009.

Contract 2-2C: The design work covers 52 miles of 10-12 inch pipeline for the Kenmare/upper Souris pipeline. The State Water Commission authorized the award of contract 2-2C to Northern Improvement Company, Fargo, ND, on September 30, 2008. The pre-construction conference is scheduled for March 24, 2009. Easement work continues along this route.

Contract 2008-1: The NAWS portion includes 13 miles of 6-10 inch pipeline between the All Seasons water treatment plant and Gardena, ND. The NAWS-All Seasons-Upham project under bid schedule 1 of contract 2008-A was opened on October 21, 2008. On July 29, 2008, the State Water Commission approved NAWS funding for the project and authorized the secretary to the Commission to execute the necessary contracts with All Seasons Water Users for completion of the project. The contract was awarded to Swanberg Construction, Grand Forks, ND; the engineering related work for this project is estimated at \$112,500.

Design 5-2C: The design work covers a 1 million gallon storage reservoir for the Kenmare/upper Souris pipeline. The bid opening was held on March 19, 2009.

Design 2-2D: The design work will cover the pipeline for the Mohall/All Seasons pipeline. A preliminary route review with the State Water Commission staff was completed on September 23, 2008. The cultural resource surveys are completed. Pipeline routing and hydraulics are being finalized; the 60 percent design review was held on March 19, 2009, and the 90 percent review is planned for mid-April, 2009. The bid opening will be scheduled possibly in early June, 2009.

Water Service Contracts: The city of Burlington and the West River Water and Sewer District appeared before the NAWS advisory committee on November 20, 2008 to request service from NAWS. The committee passed a motion to recommend that NAWS service be discussed with the existing contract users to determine if the service could be provided. North Prairie Rural Water District/North Central Consortium also appeared during the meeting and requested they provide the service.

The city of Kenmare was presented with a draft water service contract which was reviewed at their March 9, 2009 city council meeting. Their connection to NAWS was recognized in the water service contracts with the other users; no additional approval is required. Kenmare operates through the Home Rule Charter.

Berthold Pipeline Operation Status: In September, 2008, 2.5 million gallons of water flowed through the metered turnouts along the NAWS Berthold pipeline. Berthold's usage was 860,000 gallons over the 27-day period, which is an average usage of 32,000 gallons per day. The city of Minot started up operations of their south hill pipeline and usage at the meter vault was 1.7 million gallons. Minot's water usage for service to North Prairie was 83,000 gallons at the turnout near Burlington and 17,000 gallons at the Ward County 10A turnout. Additional usage along the line would be beneficial for operations and water turnover.

**NORTHWEST AREA WATER
SUPPLY (NAWS) PROJECT -
NAWS WATER SERVICE CONTRACT
237-4-4, CITY OF KENMARE, AND
AMENDMENT TO CONTRACT
(SWC Project No. 237-04)**

Northwest Area Water Supply Project Water Service Contract 237-4-4, City of Kenmare, was presented for the State Water Commission's consideration. This water service contract provides the terms for project water service of 274 gallons per minute of water supply when

water is available from Lake Sakakawea. The proposed amendment to the contract was also presented, which allows for an interim period during which the State Water Commission will provide water service from water supplied by the city of Minot to provide 116,000 gallons per day of water service to the city of Kenmare.

It was the recommendation of Secretary Frink that the State Water Commission authorize the secretary to the State Water Commission to execute Northwest Area Water Supply Project Water Service Contract 237-4-4, City of Kenmare, and the proposed amendment to the contract, which provides the terms for the interim supply and initial water use.

It was moved by Commissioner Foley and seconded by Commissioner Berg that the State Water Commission authorize the secretary to the State Water Commission to execute Northwest Area Water Supply Project Water Service Contract 237-4-4, City of Kenmare, and the proposed amendment to the contract, which provides the terms for the interim supply and initial water use, as recommended. SEE APPENDIX "H" (Executed NWAS Water Service Contract 237-4-4, City of Kenmare, and Amendment To Contract 237-4-4)

Commissioners Berg, Foley, Ken Junkert representing Commissioner Johnson, Olin, Swenson, and Thompson voted aye. There were no nay votes. Commissioner Olin announced the motion unanimously carried.

**NORTHWEST AREA WATER
SUPPLY (NAWS) PROJECT -
NAWS WATER SERVICE CONTRACT
237-4-5, UPPER SOURIS WATER
DISTRICT, AND AMENDMENT
TO CONTRACT
(SWC Project No. 237-04)**

The Upper Souris Water District and other Northwest Area Water Supply Project communities executed water service contracts with the State Water Commission in 1994. The contract demonstrated a commitment from the community to purchase water and repay capital costs associated with the construction of the NAWS project. The State Water Commission deferred executing the contract until the system was ready to serve the users. The NAWS project is now ready to serve the Upper Souris Water District through an interim water supply from the city of Minot.

Northwest Area Water Supply Project Water Service Contract 237-4-5, Upper Souris Water District, which provides the terms for project water service when water is available from Lake Sakakawea, was presented for the State Water Commission's consideration. The proposed amendment to the contract was also presented, which allows for an interim period during which the State Water Commission will provide water service from water supplied by the city of Minot to provide 127,000 gallons per day of water service to the Upper Souris Water District.

It was the recommendation of Secretary Frink that the State Water Commission authorize the secretary to the State Water Commission to execute Northwest Area Water Supply Project Water Service Contract 237-4-5, Upper Souris Water District, and the proposed amendment to the contract, which provides the terms for the interim supply and initial water use.

It was moved by Commissioner Swenson and seconded by Commissioner Thompson that the State Water Commission authorize the secretary to the State Water Commission to execute Northwest Area Water Supply Project Water Service Contract 237-4-5, Upper Souris Water District, and the proposed amendment to the contract, which provides the terms for the interim supply and initial water use, as recommended. SEE APPENDIX "I" (Executed NWS Water Service Contract 237-4-5, Upper Souris Water District, and Amendment To Contract 237-4-5)

Commissioners Berg, Foley, Ken Junkert representing Commissioner Johnson, Olin, Swenson, and Thompson voted aye. There were no nay votes. Commissioner Olin announced the motion unanimously carried.

**NORTHWEST AREA WATER
SUPPLY (NAWS) PROJECT -
AUTHORIZE AWARD OF CONTRACT
5-2C, KENMARE AND UPPER SOURIS
SEGMENT
(SWC Project No. 237-04)**

Bids were opened for Northwest Area Water Supply (NAWS) Project contract 5-2C, Kenmare and Upper Souris Segment, on March 19, 2009. This contract involves the construction of a one million gallon reservoir near Kenmare.

There were three bids opened from the following for NAWS contract 5-2C: Caldwell Tanks, Inc., Louisville, KY; CB&I Constructors, Inc., Bolingbrook, IL; and Landmark Structures I, L.P., Fort Worth, TX. The apparent low total base bid received was \$1,841,000 from Caldwell Tanks, Inc., Louisville, KY. The project engineer's estimate was \$2,074,947. The contract documents specify that the State Water Commission has 90 days to award the contract after the bid opening.

The contract documents allow the State Water Commission to select the most advantageous bid. The project engineer reviewed the bids and recommended the award of NAWS contract 5-2C to Caldwell Tanks, Inc., Louisville, KY. The contract will require approval by the Bureau of Reclamation, and the award of the contract and notice to proceed are dependent on the satisfactory completion of the contract documents by Caldwell Tanks, Inc., and the State Water Commission's legal counsel review.

It was the recommendation of Secretary Frink that the State Water Commission authorize the secretary to the State Water Commission to award Northwest Area Water Supply Project contract 5-2C, Kenmare and Upper Souris Segment, in the amount of \$1,841,000, to Caldwell Tanks, Inc., Louisville, KY, contingent upon a legal review of the contract documents by the state, and written concurrence by the Bureau of Reclamation that the contract prerequisites have been satisfied.

It was moved by Commissioner Thompson and seconded by Commissioner Foley that the State Water Commission authorize the secretary to the State Water Commission to award Northwest Area Water Supply Project contract 5-2C, Kenmare and Upper Souris Segment, in the amount of \$1,841,000, to Caldwell Tanks, Inc., Louisville, KY. This action is contingent upon a legal review of the contract documents by the state, and written concurrence by the Bureau of Reclamation that the contract prerequisites have been satisfied.

Commissioners Berg, Foley, Ken Junkert representing Commissioner Johnson, Olin, Swenson, and Thompson voted aye. There were no nay votes. Commissioner Olin announced the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
CONTRACT AND STATUS REPORT
(SWC Project No. 1736)**

Tim Freije, project manager for the Southwest Pipeline Project, provided the following project status report. All of the contractors suspended their operations

in December, 2008 due to winter conditions:

Medora-Beach Regional Service Area, Phase III:

Contract 7-8G, Gassy Butte service area, consists of 82 miles of pipe serving 86 users. One (1) high consumption user and 5 standard users were added after the contract was bid. The contractor, Northern Improvement Company, began work on October 29, 2008. There are approximately 10 miles of the contract on United States Forest Service land; the permit was received on November 14, 2008. The substantial completion date is August 1, 2009.

Forty-one (41) of the 82 miles of pipe and 16 of the 86 user services have been installed. The United States Forest Service provided notification that the pipeline route passes within one mile of seven grouse leks (drumming grounds); one service line cannot be constructed between March 1 and June 15 as a result of the proximity to a grouse lek.

The contractor suspended construction operations on contract 7-8G on December 11, 2008 due to winter conditions.

Oliver-Mercer-North Dunn Regional Service Area Preliminary Engineering Report:

The Oliver-Mercer-North Dunn (OMND) regional service area preliminary engineering report was published by Bartlett & West/Boyle in December, 2008. The OMND regional service area will include a new water treatment plant at the Zap reservoir site, five new water storage tanks, four booster pump stations, and approximately 1,000 miles of pipe that will serve up to six cities, 12 bulk users including Missouri West Water System, and approximately 1,000 rural users. The 434 users in the Killdeer Mountains, Grassy Butte, and Fairfield service area, which are currently served by the Medora-Beach regional service area, will likely be served through the OMND facilities when completed. The raw water intake system will require expansion to adequately supply the OMND area and the existing pipeline users. Additional intake capacity may be obtained from Basin Electric Power Cooperative or an auxiliary intake. The total project costs for OMND are estimated to be \$90 million.

Bartlett & West/Boyle are developing an environmental assessment for the Bureau of Reclamation for the OMND regional service area, which is expected to be completed in June, 2009.

Oliver-Mercer-North Dunn Regional Service Area Water Treatment Plant:

The Oliver-Mercer-North Dunn (OMND) regional service area preliminary engineering report includes a new water treatment plant at the Zap reservoir site at an estimated cost of \$12 million. Cost estimates were developed for treatment plants utilizing lime softening v. membrane softening with various concentrate disposal systems for the membrane concentrate. Bartlett & West/Boyle was directed by the State Water Commission staff to proceed with the design work utilizing the membrane filtration and softening.

The pilot study for the OMND water treatment plant has been completed. It is anticipated that the membrane procurement contract could be advertised in April and awarded in May, 2009.

Dickinson Water Treatment Plant Assessment:

Bartlett & West/Boyle conducted an on-site review of the Dickinson water treatment plant in August, 2008 to review the structural condition and electrical, mechanical, and water processing systems. Issues that need to be addressed were grouped into immediate priority at an estimated cost of \$500,000, and secondary priority categories at an estimated cost of \$1.2 million.

***SOUTHWEST PIPELINE PROJECT -
TROTTERS AND FAIRFIELD SERVICE
AREAS, SEEDING OF DISTURBED
AREAS ASSOCIATED WITH CONTRACTS
7-8E AND 7-8F - AUTHORIZE AWARD
OF CONTRACT S78EF
(SWC Project No. 1736)***

On March 19, 2009, bids were opened for Southwest Pipeline Project contract S78EF for seeding approximately 488 acres of pipeline easements based on plan and profile measurements of disturbed land associated with the pipeline installation under contract 7-8F and portions of contract 7-8E. There were four

bids received from the following for contract S78EF: Precision Landscaping and Construction, Minot, ND; Holland Contracting, Moorhead, MN; Heuer Construction, Leonard, ND; and Magic Mile Welding, Minot, ND. The work under contract S78EF includes furnishing and installing all seed, fertilizer, and cover crops, and provide the necessary transportation, labor, materials, tools, equipment, services, and other items to complete the reclamation efforts. The contract completion date is anticipated to be June 15, 2009. The apparent low bid received was in the amount of \$99,930.74 from Precision Landscaping and Construction, Minot, ND.

The contract documents allow the State Water Commission to select the most advantageous bid. Based on the project engineer's review, the bid received from Precision Landscaping and Construction appears to be in accordance with the advertisement for construction bids and bid documents, and is considered to be a responsible and responsive bid. It was recommended by the project engineer to award contract S78EF to Precision Landscaping and Construction, Minot, ND. The award of the contract is dependent on the completion of the contract documents, and a legal review.

It was the recommendation of Secretary Frink that the State Water Commission authorize the secretary to the State Water Commission to award Southwest Pipeline Project contract S78EF to Precision Landscaping and Construction, Minot, ND, in the amount of \$99,930.74.

It was moved by Commissioner Berg and seconded by Ken Junkert representing Commissioner Johnson that the State Water Commission authorize the secretary to the State Water Commission to award Southwest Pipeline Project contract S78EF to Precision Landscaping and Construction, Minot, ND, in the amount of \$99,930.74. This action is contingent upon completion of the contract documents, and a legal review.

Commissioners Berg, Foley, Ken Junkert representing Commissioner Johnson, Olin, Swenson, and Thompson voted aye. There were no nay votes. Commissioner Olin announced the motion unanimously carried.

***DROUGHT DISASTER LIVESTOCK
WATER SUPPLY PROJECT
ASSISTANCE PROGRAM -
APPROVAL OF ADDITIONAL 2007-2009
BIENNIUM STATE FUNDS (\$625,000);
AND PROGRAM TERMINATION
EFFECTIVE MARCH 23, 2009
(SWC Project No. 1851)***

The Drought Disaster Livestock Water Supply Project Assistance program, established by the North Dakota Legislature in 1991, is a state cost participation program administered by the State Water Commission that provides financial assistance to existing livestock producers with water supply problems caused by drought. North Dakota

Administrative Code Article 89-11 was adopted by the Commission on June 24, 1991 for program management.

Previous State Water Commission actions include: June 24, 1991 - \$250,000; and July 1, 1992 - \$50,000 (program terminated). On July 1, 2001, the program was reinstated following Governor Hoeven's issuance of North Dakota Drought Emergency Proclamation, Executive Order 2002-04; August 15, 2002 - \$200,000; November 3, 2003 - \$150,000; and March 10, 2005 - remaining funds expended (program terminated). On June 28, 2006, the program was reinstated following Governor Hoeven's issuance of North Dakota Emergency Proclamation, Executive Orders 2006-05 and 2006-05.1 on June 26, 2006 and July 12, 2006, respectively; June 28, 2006 - \$200,000; July 20, 2006 - \$200,000; October 12, 2006 - \$250,000; February 15, 2007 - \$550,000; and July 17, 2007 - remaining funds expended (program terminated). The Commission also approved proposed amendments to the North Dakota Administrative Code Article 89-11, Drought Disaster Livestock Water Supply Project Assistance Program, chapter 89-11, on July 20, 2006.

On May 9, 2008, Governor Hoeven issued North Dakota Drought Emergency Proclamation, Executive Order 2008-02. On May 14, 2008, the State Water Commission reinstated the Drought Disaster Livestock Water Supply Project Assistance program and approved an allocation of \$1,000,000 for the program; and on June 23, 2008, the Commission allocated an additional \$250,000, for a total state cost participation of \$1,250,000 since program reactivation on May 14, 2008.

As of March, 2009, approximately 586 applications, totaling 727 projects, had been received of which 120 projects did not meet program requirements. Approximately 423 projects have been completed for a total of \$1,062,241, at an average cost of \$2,629 per project. Of the \$1,200,000 allocated for the program, approximately \$137,759 remains available for reimbursement to producers. Applicants who were unable to complete their projects within the 180-day time limit were contacted to determine if they still required assistance; an extension of time was offered and 75 of the applicants applied for an extension to complete their projects. Approximately 38 applications were received during the winter months which are being reviewed. The pending approvals could total approximately \$739,000.

At its meeting on December 5, 2008, the State Water Commission approved an appeals process for those projects that the Commission staff deemed did not meet the program criteria. To date, 38 pending applications are eligible for appeal.

It was the recommendation of Secretary Frink that the State Water Commission approve an additional allocation not to exceed \$625,000 for the Drought Disaster Livestock Water Supply Project Assistance Program to fund those project approvals under the current drought emergency. The Commission's affirmative action would increase the total state cost participation to \$1,875,000 since program reactivation on May 14, 2008.

It was also the recommendation of Secretary Frink that due to concerns relating to budget constraints, and that the emergency drought conditions have eased statewide, the Drought Disaster Livestock Water Supply Project Assistance program terminate, effective March 23, 2009.

It was moved by Commissioner Thompson and seconded by Commissioner Foley that the State Water Commission approve an additional allocation not to exceed \$625,000 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), for the Drought Disaster Livestock Water Supply Project Assistance program; and, that the Drought Disaster Livestock Water Supply Project Assistance program terminate, effective March 23, 2009. This action is contingent upon the availability of funds.

This action increases the total state cost participation to \$1,875,000 for the Drought Disaster Livestock Water Supply Project Assistance program since program reactivation on May 14, 2008.

Commissioners Berg, Foley, Ken Junkert representing Commissioner Johnson, Olin, Swenson, and Thompson voted aye. There were no nay votes. Commissioner Olin announced the motion unanimously carried.

**GARRISON DIVERSION
CONSERVANCY DISTRICT
REPORT
(SWC Project No. 237)**

The Dakota Water Resources Act of 2000 authorized the Secretary of the Interior to conduct a comprehensive study of the water quantity and quality needs of the Red River valley in North

Dakota and possible options for meeting those needs. The Act identified two project-related studies: the *Report on Red River Valley Water Needs and Options*, and the *Red River Valley Water Supply Project Environmental Impact Statement (EIS)*. The Bureau of Reclamation completed the *Report on Red River Valley Water Needs and Options*. The State of North Dakota and the Bureau jointly prepared the EIS. Governor Hoeven designated the Garrison Diversion Conservancy District to represent the state in this endeavor.

The draft EIS was released in December, 2005, public hearings were held in February and March, 2006, and all studies have been completed. The final EIS was available to the public on December 28, 2007. The Record of Decision was scheduled to be issued 30 to 90 days from the date that the final EIS was available to the public, however, the U.S. State Department requested that the Bureau of Reclamation delay signing the Record of Decision until discussions with Canada have been concluded.

A supplemental draft EIS was completed with the comment period ending on April 25, 2007. Additional study efforts included biota plant failure analysis by the United States Geological Survey (USGS), water quality monitoring by the USGS, impact analysis of Missouri River depletions under drought conditions by the Corps of Engineers, and a cumulative impact analysis of ground-water depletions in Minnesota by the USGS.

The status report, dated March 3, 2009, provided by the Garrison Diversion Conservancy District relating to the specific efforts of the Red River Valley Water Supply project is attached hereto as **APPENDIX "J"**.

**LONG-RANGE WATER SUPPLY
STUDY FOR COUNTIES OF BURKE,
DIVIDE, MCKENZIE AND WILLIAMS -
EXPENDITURE APPROVAL (\$65,000)
FROM WATER DEVELOPMENT
RESEARCH FUND
(SWC Project No. 237-03)**

Board, Williams Rural Water District, city of Williston, Ray and Tioga Water Association, and the BDW Water Association.

The Garrison Diversion Conservancy District presented a request to define a long-range water supply plan for the region surrounding the city of Williston including the counties of Burke, Divide, McKenzie, and Williams. The systems involved are the city of Watford City, McKenzie County Water Resource

The plan objectives include the practicality of a regional water system using Williston as a water source to serve the area. The plan would compare the long-term costs and benefits of a water distribution pipeline to convey Missouri River water to the cities and rural systems in western North Dakota compared to construction of several separate water systems.

The estimated cost of the study is \$100,000; the water systems have committed \$35,000 to fund a study to determine the best solution for the region, and have requested that the Garrison Diversion Conservancy District administer the study. The request before the State Water Commission is to consider a 65 percent grant not to exceed \$65,000 from the Water Development Research Fund (Garrison Diversion Conservancy District). As is the current practice, the State Water Commission and the Garrison Diversion Conservancy District must approve expenditures from the Water Development Research Fund.

It was the recommendation of Secretary Frink that the State Water Commission approve a 65 percent grant, not to exceed an allocation of \$65,000 from the Water Development Research Fund, to conduct a long-range water supply study for Burke, Divide, McKenzie, and Williams counties. Affirmative action is contingent upon the availability of funds, and is subject to future revisions.

It was moved by Commissioner Berg and seconded by Commissioner Swenson that the State Water Commission approve a 65 percent grant, not to exceed an allocation of \$65,000 from the Water Development Research Fund (Garrison Diversion Conservancy District), to conduct a long-range water supply study for Burke, Divide, McKenzie, and Williams counties. Affirmative action is contingent upon the availability of funds, and is subject to future revisions.

Commissioners Berg, Foley, Ken Junkert representing Commissioner Johnson, Olin, Swenson, and Thompson voted aye. There were no nay votes. Commissioner Olin announced the motion unanimously carried.

**DEVILS LAKE
HYDROLOGIC UPDATE
(SWC Project No. 416-01)**

On March 1, 2009, the water surface elevation of Devils Lake was 1447.20 feet msl and Stump Lake was 1447.03 feet msl. The combined storage of

Devils Lake and Stump Lake for March 1, 2009 was 2.95 million acre-feet with a total surface area of both lakes at 140,000 acres. State Water Commission staff memorandum, dated March 6, 2009, and attached hereto as **APPENDIX "K"**, provides additional information relating to Devils Lake hydrology.

**MISSOURI RIVER REPORT
(SWC Project No. 1392)**

On March 5, 2009, the system storage in the six mainstem reservoirs was 45.5 million acre-feet (MAF), 7.4 MAF below

the average system storage for the end of February and 8.8 MAF more than in 2008. The record minimum system storage for the end of February was 34.3 MAF in 2007. The Corps of Engineers predicted runoff above Sioux City for 2009 to be 23.6 MAF, 95 percent of normal. This results in a forecast that the system will have 46.7 MAF at the end of 2009.

Lake Sakakawea was at an elevation of 1823.3 feet msl on March 5, 2009, 15.8 feet higher than in 2008 and 7.3 feet msl below its average end of February elevation. The record minimum end of February elevation was 1806.9 feet msl in 2007. Lake Sakakawea is forecast to peak at 1830.7 feet msl at the end of July, 2009.

The elevation of Lake Oahe was 1596.4 feet msl on March 5, 2009, which is 14.5 feet higher than in 2008 and 3.7 feet lower than its average February elevation. The record minimum February elevation for Lake Oahe was 1572.3 feet msl in 2007. Lake Oahe is forecast for an elevation of 1599.4 feet msl at the end of June, 2009.

Fort Peck Lake was at an elevation of 2210.6 feet msl on March 5, 2009, which is 11.8 feet higher than in 2008 and 16.3 feet below its average daily February elevation. The basic forecast calls for Fort Peck to peak at 2215.4 feet msl at the end of July, 2009.

The mountain snowpack water content above Fort Peck on March 1, 2009 was 89 percent of normal, and 97 percent of normal between Fort Peck and Garrison. Seventy-nine (79) percent of the peak snow accumulation has normally occurred by March 1.

The Corps of Engineers basic forecast, 23.6 MAF of runoff, shows the navigation season being shortened by 15 days. The actual length of the navigation season will be determined by the amount of water in storage on July 1, 2009.

The spring rise storage requirements of 36.5 MAF on March 1, 2009 were met, and 40.0 MAF on May 1, 2009 is forecasted to be met; therefore, there will be spring pulses (March and May) released from Gavins Point Dam in 2009. The spring rise measures are laid out by the Master Manual to help the recovery of the pallid sturgeon along the Missouri River.

The United States House of Representatives passed the Omnibus Appropriations Act, also known as HR 1105, on February 25, 2009. Section 108 in the Energy and Water Development portion of the bill authorizes a study to review the original 1944 Flood Control Act and other subsequent relevant legislation and judicial rulings to determine if changes to the authorized project purposes and existing federal water resource infrastructure may be warranted. The study would be federally funded at a total cost of \$25,000,000.

**RESOLUTION OF APPRECIATION
TO ROGER JOHNSON, COMMISSIONER,
NORTH DAKOTA DEPARTMENT
OF AGRICULTURE; AND EX OFFICIO
STATE WATER COMMISSION MEMBER
(SWC Resolution No. 2008-09-521)**

The State Water Commission considered a resolution of appreciation to Roger Johnson, Commissioner, North Dakota Department of Agriculture, who provided the benefit of his expertise and experience to the State of North Dakota as an ex officio member of the State Water

Commission since 1996. Mr. Johnson was recently elected President of the National Farmers Union.

It was moved by Commissioner Olin, seconded by Commissioner Berg, and unanimously carried, that the State Water Commission approve Resolution No. 2008-09-521, Resolution of Appreciation to Roger Johnson, Commissioner, North Dakota Department of Agriculture, and ex officio member of the State Water Commission. SEE APPENDIX "L"

There being no further business to come before the State Water Commission, Commissioner Olin adjourned the meeting at 5:15 P.M.



Jack Dalrymple, Lt. Governor
Representing John Hoeven, Governor
Chairman, State Water Commission

Dale L. Frink
North Dakota State Engineer, and
Chief Engineer-Secretary to the
State Water Commission